

FAQs regarding Fringe Benefits

These scenario's were found at www.irs.gov

1) A town has a public safety director who is a retired police chief. He carries a firearm and has arrest powers. He drives a regular unmarked vehicle and commutes in this vehicle from home to the office. Is he entitled to exclude the value of the use of the car from his income?

As a general rule, fringe benefits such as the use of a car are includible in income. We do not have enough facts to answer this question, but the law is as follows.

Section 132(a)(3) of the Code allows an exclusion for a working condition fringe. A working condition fringe is any property or services provided to an employee by an employer to the extent that, if the employee paid for the property or services, the payment would be allowable as a deduction under section 162 or 167. Section 132(d). In this context, the payment would have to be a business expense.

The value of a "qualified nonpersonal use vehicle" can be excluded from income as a working condition fringe if the use of the vehicle conforms to the requirements of paragraphs (k)(3) through (7) of section 1.274-5T of the regulations. Section 1.132-5T(h), Income Tax Regulations. An employee does not have to substantiate the business use of a nonpersonal use vehicle in order to exclude its value from income.

A qualified nonpersonal use vehicle means any vehicle which, by reason of its nature, is not likely to be used more than a minimal amount for personal purposes. Section 274(i). Normally this is something like a fire engine, a clearly marked police or fire vehicle, a flatbed truck, school bus, ambulance, etc.

There are only limited circumstances under which an unmarked police car qualifies as a nonpersonal use vehicle. First, the driver must be a "law enforcement officer." A law enforcement officer must satisfy all of the following requirements. He or she must be a full-time employee of a governmental unit that is responsible for preventing or investigating crimes involving injury to persons or property (including catching or detaining persons for these crimes). The officer must be authorized by law to carry firearms, execute search warrants, and to make arrests. The officer must regularly carry firearms, except when it is not possible to do so because of the requirements of undercover work.

Second, any personal use of the vehicle must be authorized by the government agency or department that owns or leases the vehicle and employs the officer, and, third, the use must be incident to law-enforcement functions, such as being able to report directly from home to a stakeout or surveillance site, or to an emergency situation. Use of an unmarked vehicle for vacation or recreation trips cannot qualify as an authorized use. Section 1.274-5T(k)(6), Income Tax Regulations.

It is not clear whether a public safety director is employed by an agency responsible for preventing or investigating crimes involving injury to persons or property. The individual

appears to have some of the powers of a law enforcement officer must have all of the powers listed above.

It is not clear from the facts whether the individual's use of the vehicle is authorized by the governmental agency which employs him or whether the use is incident to law-enforcement functions. If the individual is allowed to use the vehicle as a courtesy and for commuting purposes, it does not qualify as a nonpersonal use vehicle, and the commuting value is income subject to FICA and income tax withholding.

2) For purposes of defining a qualified nonpersonal use vehicle, what qualifies as a clearly marked police or fire vehicle?

A police or fire vehicle is clearly marked if it has insignia or words which make it clear that it is a police or fire vehicle. A marking on a license plate is not a clear marking for this purpose.

According to the regulations, the exclusion for a clearly marked police or fire vehicle applies only to a vehicle that is required to be used for commuting by a police officer or fire fighter who, when not on a regular shift, is on call at all times. Other than commuting, personal use of the vehicle, outside the limit of the police officer's arrest powers or the fire fighter's obligation to respond to an emergency, must be prohibited by the governmental unit. Section 1.274-5T(k)(13), Income Tax Regulations.

3) A town provides cars which its officials and other employees use during the workday for business purposes. These employees also use the cars for commuting to and from work. Is the use of these vehicles for commuting taxable income to the employees?

Generally, yes, the value of noncash fringe benefits is taxable income to the recipient. Code section 61(a). Thus the commuting value of a vehicle owned or leased by a public entity usually represents taxable income to the employee.

One exception is for the qualified nonpersonal use vehicle, described above. Thus, for example, when a law enforcement officer drives a clearly marked police car to his or her residence when off duty and otherwise satisfies the requirements described above, the commuting value of that vehicle is not income to the employee.

There are several ways to value the commuting use of a car for income and FICA tax purposes: the cents-per-mile rule, the lease value rule, and the commuting rule. Under the cents-per-mile rule, the value of the use of a car is the standard mileage rate (for 2001 34.5 cents per mile) multiplied by the number of personal miles driven. Under the lease value rule, the value of the use of the car is the annual lease value (in the regulations) less the amount of use which would be a working condition fringe to the employee. See section 1.61-21(d)(2), Income Tax Regulations, which also discusses this valuation method in detail. To qualify as a working condition fringe, the business use must be deductible as a business expense by the employee. This means that the

employee must keep a log to account for the business miles driven. More information about these methods can be found in [Publication 15-B](#), *Employer's Tax Guide to Fringe Benefits*.

Under limited circumstances, the "commuting rule" can be used to determine the commuting value of a car. Under this rule, the employer determines the commuting value by multiplying each one-way commute (from home to work or from work to home) by \$1.50. If more than one employee commutes in the vehicle, this value applies to each employee. To use this rule, the employer must meet all the following requirements:

1. The employer owns or leases the vehicle and provides it to one or more employees for business use.
2. **For bona fide noncompensatory business reasons, the employee is required to commute in the vehicle.** The employer is treated as meeting this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.
3. The employer establishes a written policy under which the employee is not allowed to use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home).
4. The employee does not use the vehicle for personal purposes, other than commuting and de minimis personal use.
5. If this vehicle is an automobile, the employee who must use it for commuting is not a control employee. An elected official is always a control employee. (For tax year 2001, a control employee of a government employer is one whose compensation is \$155,000 or more for the year.)

The term "bona fide noncompensatory business reason" means that the employee must be required to commute in the vehicle for the benefit of the employer, not for the benefit of the employee. This would be the case if the employee was driving a van in an employer-sponsored carpool. Another example would be if a car, though unmarked, was outfitted with communications or other equipment the employee would need if on call 24 hours a day. Other possibilities might be unavailability of parking at the workplace. Also, an employee in the field who would otherwise have to return to the workplace before going home might be able to work longer if allowed to commute in an employer-provided vehicle. **It is not enough for the employer to simply state that it requires employees to commute in employer-owned vehicles.**

4) Under what circumstances does a town reimburse employees for use of their vehicles in the employer's business?

Let's consider these examples:

1. An employee is paid \$10 per day, in addition to his regular compensation, to pick up and deliver mail between four schools and a central office.

2. An employee is paid \$8.50 per trip, in addition to his regular compensation, to deliver meals from two satellite kitchens to two receiving schools.
3. employee is paid \$26 per hour for using his truck to plow snow during off hours.

The employees in #1 and #2 are using their own vehicles for business travel. Under these facts, the payments are additional compensation subject to income and employment taxes.

The employees would be able to exclude mileage reimbursements from income and employment taxes only if reimbursements were made under an accountable plan as defined in Code section 62(c) and regulations. Employees must be required to keep track of actual mileage and submit documentation to their employer showing date traveled, mileage, and business purpose. The employer can reimburse the employee using the standard federal mileage rate of up to 34.5 cents per mile for calendar year 2001. If the employee receives more than the standard rate, the excess is taxable and must be reported on the employee's W-2 subject to applicable income and FICA taxes. These requirements, as discussed above, are found in Code section 62(c) and section 1.62-2, Income Tax Regulations, defining reimbursements and other expense allowance arrangements. The Service has recently won several cases on the issue of "reimbursement" arrangements which did not satisfy the rules for accountable plans. *Trans-Box Systems v. U.S.*, 86 A.F.T.R. 2d (RIA) 5015 (9th Cir. 2000), aff'd 84 A.F.T.R. 2d (RIA) 6479 (N.D. Cal. 1998); *Shotgun Delivery, Inc. v. U.S.*, 85 F. Supp. 2d 962 (N.D. Ca, 2000); *Escobar v. Commissioner*, T.C. Memo. 2000-176 (rejecting the theory that truck rental was a separate self-employment activity).

If plowing snow is simply an extension of employee #3's regular services, the \$26 per hour would be wages. Payment for the use of the truck would have to be under an accountable plan before it could be excluded from FICA wages and taxable income. However, it is possible that this worker is working in two capacities, employee and independent contractor. For the individual to qualify as working in two capacities, both the types of work and the manner of payment must be separate and distinct. The IRS will make this determination if the employer or the employee requests it by filing Form SS-8.

5) A fire chief uses his own pickup truck for work. He accounts for the business use of his truck and is reimbursed for his mileage. He sometimes travels to and from the fire station outside of his regular work schedule. Is this considered commuting and would reimbursement be taxable?

This travel is commuting and it's a personal expense. It does not matter if the fire chief is commuting outside of his regular work schedule. Any reimbursement would be taxable to the employee.

In *O'Hare v. Commissioner*, 54 T.C. 874 (1970), the taxpayer, a physician, was not entitled to deduct the costs of traveling between his home and a hospital, in connection with extra hospital duty. In *Potenga v. Commissioner*, T.C. Memo 1976-151, the Tax Court held: "The fact that petitioner made more than one trip per day between her home and place of employment does not change the nature of the trips. When a taxpayer travels between his place of employment and his home, the expenses incurred are still personal commuting expenses regardless of the number of trips made each day." The court went on to say: "Although commuting expenses are incurred in order to reach

one's place of employment, they are treated as non-business expenses since their amount depends upon the place where one chooses to reside -- a choice which results from personal and family considerations. This reasoning applies equally to the expenses of commuting for regular duty or for extra days".